



BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-980)

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results of Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 4, 2020, the United States Court of International Trade (the Court) entered final judgment sustaining the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the 2014 countervailing duty (CVD) administrative review of the order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the 2014 administrative review of solar cells from China, and that Commerce is amending the final results.

DATES: Applicable August 14, 2020.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2670.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2017, Commerce published its final results of the 2014 administrative review of solar cells.¹ Commerce reached affirmative determinations for mandatory respondents Canadian Solar Manufacturing (Changshu) Inc. and its cross-owned affiliates (collectively, Canadian Solar) and Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliates (collectively, Trina Solar), as well as numerous other producers and exporters not selected for individual review. On November 30, 2018, the Court remanded aspects of the *Final Results* to Commerce for further consideration.² The Court remanded Commerce's determinations as regards to the Export Buyer's Credit Program, the inclusion of Comtrade data in calculating the world market price for aluminum extrusions and solar glass, Commerce's decision to revert to a tier-two benchmark in determining the price for polysilicon without considering a respondent's proffered evidence, and the finding that the provision of electricity constitutes a specific and thus countervailable subsidy.³ In its first remand redetermination, issued in April 2019,⁴ Commerce provided additional explanation and evidence for its determinations, but the Court continued to find them unsupported by substantial evidence and remanded them a second time.⁵

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM), as amended by *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review*, 82 FR 46760 (October 6, 2017) (*Amended Final Results*).

² See *Changzhou Trina Solar Energy Co., Ltd. et al. v. United States*, Slip Op. 18-166 (November 30, 2018).

³ *Id.* at 44.

⁴ See *Changzhou Trina Solar Energy Co., Ltd. et al. v. United States*, Court of International Trade Consolidated Court No. 17-00198, "Final Results of Redetermination Pursuant to Court Remand," dated April 24, 2019.

⁵ See *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 19-137 (November 8, 2019) (*Second Remand Order*).

In its second remand redetermination, issued in February 2020,⁶ Commerce explained that, although it continues to believe that it is not possible to verify whether respondents used the Export Buyer's Credit Program without the cooperation of the Government of China (GOC), it found the program not used, under protest, to comply with the Court's order.⁷ Commerce also solicited additional information for the solar glass benchmark, and selected data from PV Insights consistent with Commerce's preference for product specific monthly data.⁸ For aluminum extrusions, Commerce used the more product-specific annual data from IHS exclusively rather than averaging them with less specific monthly Comtrade data, consistent with the Court's order.⁹ For polysilicon, Commerce placed additional information on the record that supported its finding that the solar grade polysilicon market in China is distorted by government involvement.¹⁰ Finally, Commerce found, based on adverse facts available, that the provision of electricity for less-than-adequate remuneration is a regionally specific subsidy program, based on the GOC's failure to explain the variation in electricity prices between provinces.¹¹

The Court sustained Commerce's second remand redetermination in full.¹² Specifically, the Court found that Commerce's determinations regarding the Export Buyer's Credit Program, as well as the aluminum extrusions and solar glass benchmarks, complied with the options the Court provided in the *Second Remand Order*.¹³ For polysilicon, the Court explained that

⁶ See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Consol. Court No. 17-00198; Slip Op. 19-137 (November 8, 2019), "Final Results of Redetermination Pursuant to Court Remand," dated February 28, 2020 (Second Remand Redetermination).

⁷ *Id.* at 11-12.

⁸ *Id.* at 13-14.

⁹ *Id.* at 12-13.

¹⁰ *Id.* at 14-22.

¹¹ *Id.* at 22-24.

¹² See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op. 20-108 (August 4, 2020).

¹³ *Id.* at 4-8 (Export Buyer's Credit Program) and 8-14 (benchmarks for aluminum extrusions and solar glass).

Commerce reasonably identified further evidence supporting its finding of market distortion.¹⁴

Finally, the Court found that Commerce appropriately identified the missing information and facts that, when combined with an adverse inference, supported finding that the provision of electricity is regionally specific.¹⁵

Timken Notice

In its decision in *Timken*,¹⁶ as clarified by *Diamond Sawblades*,¹⁷ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s August 4, 2020, judgment constitutes a final decision of that court that is not in harmony with Commerce’s *Final Results* and *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Amended Final Results* with respect to Canadian Solar, Trina Solar, and all other producers and exporters subject to this review. The revised total subsidy rates for Canadian Solar and Trina Solar for the period January 1, 2014 through December 31, 2014 are as follows:¹⁸

Exporter or Producer	Subsidy Rate (percent <i>ad valorem</i>)
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¹⁴ *Id.* at 14-18.

¹⁵ *Id.* at 18-25.

¹⁶ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁷ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010).

¹⁸ See Second Remand Redetermination at 48.

Canadian Solar Manufacturing (Changshu) Inc. and its Cross-Owned Affiliates ¹⁹	7.36
Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Affiliates ²⁰	5.97
BYD (Shangluo) Industrial Co., Ltd	6.44
Chint Solar (Zhejiang) Co., Ltd	6.44
ET Solar Energy Limited	6.44
ET Solar Industry Limited	6.44
Hangzhou Sunny Energy Science and Technology Co., Ltd	6.44
Jiawei Solarchina Co., Ltd	6.44
Jiawei Solarchina (Shenzhen) Co., Ltd	6.44
Lightway Green New Energy Co., Ltd	6.44
Luoyang Suntech Power Co., Ltd	6.44
Ningbo Qixin Solar Electrical Appliance Co., Ltd	6.44
Shanghai BYD Co., Ltd	6.44
Shenzhen Topray Solar Co. Ltd	6.44
Systemes Versilis, Inc	6.44
Taizhou BD Trade Co., Ltd	6.44
tenKsolar (Shanghai) Co., Ltd	6.44

¹⁹ See *Final Results*, 82 FR at 32680. Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc.; CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; and CSI Solar Manufacture Inc.

²⁰ *Id.* Cross-owned affiliates are: Trina Solar Limited; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd.

Toenergy Technology Hangzhou Co., Ltd	6.44
Wuxi Suntech Power Co., Ltd	6.44

Amended Cash Deposit Rates

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection for all firms above that do not have a superseding cash deposit rate (*e.g.*, from a subsequent administrative review). For such firms, the revised cash deposit rates will be the rates indicated above, effective August 14, 2020.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1) and 777(i)(1) of the Act.

Dated: August 11, 2020

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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